

September 12, 2001

Tommy G. Thompson, Secretary  
U.S. Department of Health and Human Services  
Office of the Secretary  
Hubert Humphrey Building  
200 Independence Avenue SW  
Washington, DC 20201

Dear Secretary Thompson:

Wisconsin is pressing to meet the implementation deadline for the HIPAA Standards for Electronic Transactions rule. The Wisconsin Department of Health and Family Services (DHFS) needs your agency's assistance in determining which of our programs are health plans under HIPAA. This letter is a follow-up to a conference call of June 27, 2001, between my staff and your Department of Health and Human Services staff. I am also sending you a separate letter dealing with a second topic discussed in that conference call. The second letter specifically addresses HIPAA's relevance to Wisconsin Medicaid's home and community-based services waiver programs.

Our understanding is the only government-funded programs considered to be health plans under HIPAA are those among the 16 types listed in part 160.103 of the final Privacy rule. That section excludes government-funded programs not of the 16 types:

- whose principal purpose is other than providing or paying the cost of health care, or
- whose principal activity is the direct provision of health care to persons, or the making of grants to fund the direct provision of health care to persons.

The rule language in this part is consistent with page 82479 of the Preamble, which reads as follows:

“We therefore clarify that while many governmental programs (other than the programs specified in the statute) provide or pay the cost of medical care, we do not consider them to be individual or group plans and therefore, do not consider them to be health plans.”

Applying the above language, we initially concluded only the following DHFS-administered programs qualify as health plans under HIPAA:

- Wisconsin Medicaid,
- The Wisconsin Partnership/PACE program - a team-based care management program operated as a fully-capitated, dual Medicaid and Medicare program for older adults and people with physical disabilities
- Wisconsin Family Care—a Long Term Care program paying for medical care through county-level care management organizations using a mix of Medicaid and non-Medicaid public funds and private insurance,
- The Wisconsin State Children's Health Insurance Plan under Title XXI (BadgerCare)—BadgerCare extends health care coverage to low-income uninsured children and parents through a Medicaid expansion under Titles XIX and XXI, and
- The Wisconsin Health Insurance Risk Sharing Plan (HIRSP)—A state high-risk pool offering health insurance to Wisconsin residents who, due to their medical conditions, are unable to find adequate and affordable health insurance coverage in the private market.

Second, we tentatively concluded none of the programs listed in Attachment A, for which DHFS received federal financial assistance in the year ending June 30, 1999, are health plans under HIPAA. We are particularly interested in your confirmation that the following programs are not health plans:

- Block Grants for Community Mental Health Services,
- Block Grants for Prevention and Treatment of Substance Abuse,
- Maternal and Child Health Services Block Grant to the States,
- Immunization Grants, and
- Cooperative Agreements for State-Based Comprehensive Breast and Cervical Cancer Early Detection.

Finally, we have concluded the state programs listed below (see Attachment B) are also not health plans under HIPAA:

- County General Relief Medical,
- Wisconsin Chronic Disease,

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- Community Options Program, and
- WisconCare.

Please confirm the validity of our tentative conclusions. Your timely response on the programs listed in the body of this letter is particularly appreciated and critical to our compliance with HIPAA's deadlines.

For more information on our request, please contact Ted Ohlswager at (608) 266-5314 or [ohlswts@dhfs.state.wi.us](mailto:ohlswts@dhfs.state.wi.us).

Sincerely,

Phyllis J. Dubé  
Secretary

Enclosures: Attachment A and Attachment B

cc: Sally Canfield  
Harvey Heyman  
Lawrence Cutler  
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## **Attachment A**

### Wisconsin Department of Health and Family Services Federal Programs Potentially Impacted By the HIPAA Electronic Transactions Rule

This attachment lists federally funded programs of the Wisconsin Department of Health and Family Services (DHFS) for the year ended June 30, 1999, that may provide or purchase health care. The titles are from the Catalogue of Federal Domestic Assistance.

DHFS has initially concluded that the following federal programs are not covered entities based upon the health care provider, health care clearinghouse, health plan and covered entity definitions published in the Standards for Privacy of Individually Identifiable Health Information final rule (45 CFR Parts 160 and 164). Please confirm our tentative assessment that the Wisconsin programs funded by the following federal assistance awards are excluded as health plans and otherwise are not covered entities.

#### U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Lead Based Paint Hazard Control in Privately Owned Housing

#### U. S. DEPARTMENT OF EDUCATION

Independent Living-State Grants

Special Education-Grants for Infants and Families with Disabilities

Assistive Technology

#### U. S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Special Programs for the Aging-Title III, Part F - Disease Prevention and Health

Promotion Services

Special Programs for the Aging-Title III, Part B - Grants for Supportive Services and

Senior Centers

Special Programs for the Aging-Title III, Part C - Nutrition Services

Special Programs for the Aging-Title III Part D - In Home Services for Frail Older Individuals

Maternal and Child Health Federal Consolidated Programs

Projects for Assistance in Transition from Homelessness (PATH)

Traumatic Brain Injury

Immunization Grants

HIV Care Formula Grants

Cooperative Agreements for State-Based Comprehensive Breast and Cervical Cancer Early

Detection Programs

Block Grants for Community Mental Health Service

Block Grants for Prevention and Treatment of Substance Abuse

Preventive Health Services - Sexually Transmitted Diseases Control Grants

Health Programs for Refugees

Prevention Health and Health Services Block Grant

Maternal and Child Health Services Block Grant to the States

Maternal Child Health/Assist Tobacco Control Plan

AODA Treatment Needs Assessment

Chronic Disease Minority

## Attachment B

### State Programs

We have tentatively concluded that the following Wisconsin programs are not covered entities based upon the health care provider, health care clearinghouse, health plan and covered entity definitions published in the Standards for Privacy of Individually Identifiable Health Information final rule (45 CFR, Parts 160 and 164). We note the health plan exclusions given in (2)(ii) of the definition on page 82799 and interpret the use of the term "government-funded" to mean state, county, and local governments. Please confirm our assessment that these programs are excluded as health plans and otherwise are not covered entities.

The Wisconsin Chronic Disease Program (WCDP) is for Wisconsin residents with chronic renal disease, hemophilia, and adults with cystic fibrosis. The WCDP pays health care providers for disease related services provided to certified WCDP recipients after all other sources of payment have been used. These recipients are responsible for certain co-payments and annual deductibles determined by the program. Recipients whose annual income exceed 300% of the federal poverty level must pay a certain percent of out-of-pocket expense before becoming eligible to receive WCDP benefits.

All recipients must be Wisconsin residents and have been diagnosed with chronic renal disease, hemophilia, or cystic fibrosis.

- To be eligible for the Chronic Renal Disease program, applicants that are eligible for Medicare must pay Medicare Part B premiums.
- Hemophilia Home Care (HHC) program participants must enter into a written agreement with a comprehensive hemophilia treatment center for compliance with a maintenance program.
- To be eligible for the Adult Cystic Fibrosis (ACF) program, applicants must be 18 years of age or older.

Program participants receive the following benefits:

- Certified Chronic Renal Disease recipients are eligible for reimbursement of dialysis and transplant services, including prescription medications, home supplies, laboratory and x-ray services, and kidney donor services.
- Hemophilia Home Care recipients are only eligible for reimbursement of blood derivatives and supplies necessary for home infusion.
- Certified Adult Cystic Fibrosis recipients are eligible for reimbursement of inpatient/outpatient hospital services, certain physician services, laboratory and x-ray services, prescription medications, and home supplies for the treatment of cystic fibrosis.

The Wisconsin Community Options program (non MA funded) serves people who need long-term support, *regardless of age or type of disability*, who need the same levels of physical or mental health care as nursing home residents do. There are no income limits for a Community Options assessment and care plan. However, income guidelines are used to determine if Community Options will pay for part or all of the cost of services that the assessment determines are necessary. People who can afford to pay may receive help finding the services they need after an assessment is completed.

## **Appendix B – continued**

All other sources of funding or voluntary help will be considered before Community Options funds are used to pay for services. For example, Community Options may arrange for referral to Medicaid or Medicare providers for services covered under those programs. Such providers bill the respective programs directly. Also, other community resources will be used to meet the participant's needs. Getting services will depend on the availability of program funds. Counties may have waiting lists for Community Options funding.

The Community Options program is *not* a Medicaid waiver program.

The WisconCare program provides support and assistance for unemployed and underemployed individuals and families who no longer have access to traditional health coverage. WisconCare assists with the costs of allowable health care in the areas of outpatient treatment and inpatient maternity need. Eligibility is contingent upon applicants meeting three criteria: 1) applicants are not eligible for health care coverage through another program and have no health coverage which covers outpatient/maternity benefits; 2) their gross family income is at or below 150% of the current federal poverty level; and 3) the parents are either unemployed or working less than 25 hours a week, and are available for full-time work. This program purchases health care, but, as a government program, it is not specifically listed in the rule's health plan definition and does not qualify as a high-risk pool.

County General Relief Medical provides assistance in cases where there is insufficient income to meet basic needs for individuals who cannot qualify under any other assistance program - including health care. The program is payer of last resort. General relief is an optional county-administered benefit program governed by statute. This program is funded in part by state block grants.